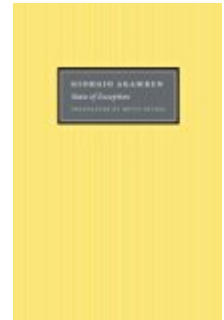




Giorgio Agamben. *State of Exception*. Translated by Kevin Attell. Chicago: University of Chicago Press, 2005. 104 pp. \$15.00, paper, ISBN 978-0-226-00925-4.



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State of Exception, a book written by Italian philosopher Giorgio Agamben, is the English translation by Kevin Attell of the monograph *Stato di eccezione*. Well known are the author's works that preceded this book, namely, *Homo Sacer: Sovereign Power and Bare Life* (1998) and *Remnants of Auschwitz: The Witness and the Archive* (1999) (both translated from the Italian by Daniel Heller-Roazen). *State of Exception* is a sequel to *Homo Sacer*, in which he argued that the concentration camp (including the death camp at Auschwitz) is "the fundamental biopolitical paradigm of the West."^[1] In *State of Exception* (a book consisting of a mere eighty-eight pages with three pages of references and a three-page index), Agamben investigates the terra incognita between (public) law, political fact, juridical order, and life itself. He adopts a poststructuralist perspective exposing the assumptions of modernity as (effective) fictions.

Agamben begins his current inquiry with an analysis of the legal basis behind the National Socialist persecution of unwanted groups. This law,

the *Verordnung zum Schutz vom Volk und Staat* (Decree for the Protection of the People and the State), was proclaimed on February 28, 1933, a day after the Reichstag fire.^[2] According to Agamben, this juridical measure can be considered to be the starting point of the Third Reich as an example of what he calls the "state of exception," the suspension of the juridical order.

The book consists of six chapters. In the first chapter, "The State of Exception as a Paradigm of Government," Agamben problematizes the fact that there is no juridical theory of the state of exception. Scholars instead regard the state of exception as a political problem. He concludes that, as a result, political crises appear only to be understood on political and not juridical grounds. What is little recognized is that law possesses within itself an exception that traps humans and objects within the juridical order. According to Agamben, the state of exception increasingly appears to be dominant in contemporary politics. As an example, he mentions the USA Patriot Act (issued on October 26, 2001), which gives the United

States government the power “to take in custody any alien suspected of activities that endangered the national security of the United States” (p. 3).

Agamben continues with an examination of Western law and scholarship on the state of exception. In so doing, he unearths a distinction between those who see the state of exception as juridical and those who consider it political. Agamben breaks with both approaches and argues that the state of exception is “neither external nor internal to the juridical order, and the problem of defining it concerns precisely a threshold, or a zone of indifference, where inside and outside do not exclude each other but rather blur with each other” (p. 23).

Following his theoretical investigation of the place of the state of exception, he gives a critical reading of the opinion of, for example, legal scholar Léon Duguit, who places necessity as the foundation of the state of exception (“necessity has no law”). According to Agamben, this theory ultimately fails due to the definition of “necessity,” that is, it almost treats necessity as an element present in nature, while necessity is entirely a subjective judgment. He discards the alleged foundation of the state of exception. In the following chapters, Agamben tries to understand the state of exception in a more thorough way.

In chapter 2, “Force of Law without Law,” Agamben discusses the work of the German constitutional law scholar Carl Schmitt concerning the phenomenon of interest. Agamben identifies the state of exception in Schmitt’s theory “as the place where the opposition between the norm and its realization reaches its greatest intensity” (p. 36). The state of exception separates the norm from its application in order to make its application possible showing the connection between norm and its application. Using a lecture given by the French poststructuralist philosopher Jacques Derrida in 1989 called “Force de loi: le fondement mystique de l’autorité,” Agamben examines what Derrida calls “the force of law.” Agamben defines

“force of law” as “decrees ... that the executive power can be authorized to issue in some situations, particularly in the state of exception,” which have the force of law (p. 38). Building on the influences of Schmitt and Derrida, the author remarks that the state of exception is “the separation of force of law from the law” (p. 38). Furthermore, this force of law without law is “a mystical element by means of which law seeks to annex anomie itself” (p. 39). He writes that the application of a norm is not logically present within the juridical norm. According to Agamben, “it is ultimately necessary to suspend its application, to produce an exception” (p. 40). As an example he gives the words of Adolf Eichmann who said that “the words of the Führer have the force of law” (p. 38).

In chapter 3, “*Iustitium*,” the author makes a genealogical investigation of Roman law, specifically of the state of exception in the form of the *iustitium* as a prototypical case of the state of exception. The author discusses the work of the German historian and scholar of Rome, Theodor Mommsen, who wrote that the *senatus consultum ultimum* (an element of the prototypical case of the state of exception) is a “quasi-dictatorship.” According to Agamben, this is incorrect for “there is no creation of a new magistracy” or government during the *iustitium* (p. 47). Every citizen had the power to save the existence of the state and society during an *iustitium*. Therefore, the state of exception is not “a dictatorship but a space devoid of law, a zone of anomie in which all legal determinations are deactivated” (p. 50).

Chapter 4, “Gigantomachy Concerning a Void,” discusses the debate between Walter Benjamin and Schmitt on the state of exception from the perspective of the theory Agamben has developed in the previous three chapters. He develops a connection between the two positions in this debate. Schmitt wants to understand the state of exception within the juridical order. Benjamin wants this relation to be nullified in his concept of

pure violence (“action that neither makes nor preserves law”) (p. 60). Agamben posits that the law seems to require the suspension of itself for its force. Law appears only to exist if it can change something that is not regulated by law. Pure violence is the stake in the conflict over the state of exception (as in the debate between Benjamin and Schmitt). This form of human action (pure violence) does not exist before but rather is constructed through the conflict over the state of exception. Agamben’s poststructuralist approach can be well illustrated by a European football match. After the invention of the European football match, the importance of winning the game seems to exist prior to the game though it is a fiction (constructed through the game) that seems very real and almost gains an autonomous existence.

In chapter 5 (“Feast, Mourning, Anomie”), Agamben further analyzes the meaning of the term “*iustitium*.” The meaning of this word changed from the meaning of the suspension of law during political crises to that of the collective mourning of the death of elite persons during the Roman period. Both meanings have in common the fact that they take place during a time of social and political uncertainty, what is called tumult. Agamben interprets this shift in meaning as “an incorporation of the state of exception and anomie directly into the person of the sovereign, who begins to free himself from all subordination to the law and asserts himself as *legibus solutus* (unbound by the laws)” (p. 69). Therefore, the sovereign appears as “living law” (“in him the life of the law coincides with a total anomie”) (p. 69). Agamben claims that “because he [the sovereign] is identified with the law, he is held in relation to it and is indeed posited as the anomic foundation of the juridical order. The identification between sovereign and law represents, that is, the first attempt to assert anomie of the sovereign and, at the same time, his essential link to the juridical order. The *nomos empsukhos* [living law] is the original form of the nexus that the state of excep-

tion establishes between an outside and an inside of the law” (pp. 69-70).

In chapter 6 (“*Auctoritas* and *Potestas*”), Agamben analyzes the state of exception with the Roman concepts *auctoritas* and *potestas* and further refines his theoretical investigation. He notes that there seem to be two connected elements in the juridical order of Europe and North America: a normative (*potestas*) and an anomic element (*auctoritas*). Both function together. Norm-making and norm-maintaining (a process that always points toward complete regulation) can only happen when norms can be suspended in the state of exception (and vice versa). The state of exception holds the anomic and normative tendency together by installing a barrier between them. This barrier is constructed on the idea that anomie (*auctoritas*, living law, or force of law) is connected to *potestas*. A potentially genocidal situation arises when the two elements join together in one person or institution.

Primarily because of the depth and complexity of his theoretical theses, Agamben’s study is a worthwhile addition to the burgeoning literature on mass violence. The relevance of Agamben’s theoretical endeavor could be meaningfully enhanced by empirical studies of current and past genocides that seek to utilize his idea of the state of exception. A possible critique of the whole theoretical exposé is that the author gives an essentialist definition of the phenomenon he is investigating. He treats this phenomenon as if it always has the same fundamental characteristics without further examining the contemporary embodiments of the phenomenon. His study also begs the question of which regimes can be described with the concept. This question follows from the first and highlights the same essentialist problem of his theoretical work.

More questions about the book can be raised. Can the paradigmatic case of the Roman *iustitium* be used to describe the state of exception in the world of today or tomorrow? Are acts committed

during the state of exception really in an absolute no man's land with respect to the law, as Agamben suggests? Can such acts only be deviant before the state of exception and after the state of exception has been lifted? What about the social construction of the state of exception? The state of exception is the result of a subjective ordeal of society and government. It is in the same league as the figure of necessity. If the Western world perceives, for example, the death camp of Auschwitz as business as usual, it will not be judged as belonging to the state of exception. Behind the distinction between anomic and normative tendencies, and on the threshold between the two tendencies (the state of exception), lies a seemingly complex web of human behavior. When something exceptional becomes the rule, how can we judge what will be part of the state of exception? All these questions do not diminish the value of Agamben's dense and original theoretical work. In fact, they act as invitations to create a new line of inquiry on mass violence.

Notes

[1]. Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998), 181.

[2]. Karin Orth, *Das System der nationalsozialistischen Konzentrationslager: eine politische Organisationsgeschichte* (Hamburg: Hamburger Edition, 1999), 23.

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